

MEDICAL BOARD OF CALIFORNIA

INITIAL STATEMENT OF REASONS

Hearing Date: February 2, 2007

Subject Matter of Proposed Regulations:

Specificity of Business & Professions Code Sections 2111, 2113, and 2168 – 2168.5: foreign fellowships, foreign medical school faculty, and medical faculty permits, relating to:

- 1) Approval of Foreign Trained Physicians for research and training fellowships authorized by section 2111 of the Business & Professions Code, including application and supervision criteria;
- 2) Registration of Foreign Trained Physicians for faculty positions in accredited medical schools authorized by section 2113 of the Business & Professions Code, including application criteria, licensure planning, and informed consent for patients treated by these license-exempt doctors;
- 3) Criteria for participants of the review committee responsible for advising the Division on the approval of faculty permits authorized by Sections 2168 – 2168.5 of the Business & Professions Code.

Section(s) Affected:

Title 16, Sections 1315.03, 1325.4, and 1326.

Specific Purpose of each adoption, amendment, or repeal:

To implement provisions in AB 2260 (Negrete McLeod, Chapter 565, Statutes of 2006), which amended sections 2111, 2113 and 2168 – 2168.5 of the Business & Professions Code. This proposal addresses:

- 1) The application criteria and the definition of the terms “medical school” and “staff” as not only the facility and staff at the school, but also those affiliated facilities, such as medical centers, clinics and hospitals. In addition, staff is defined as paid, licensed and active faculty or staff, and not voluntary staff. Only faculty members may supervise these fellows. (1325.4)
- 2) The requirement that medical schools include in their informed consent document that faculty practicing medicine under section 2113 of the Business & Professions Code are not licensed. This is currently required for unlicensed resident physicians (physicians-in-training), and would make the informed consent requirement consistent to apply to unlicensed faculty. (1326)
- 3) Establish the qualifications and criteria for the review committee advising the Division on the approval of applications for Business & Professions Code

Section 2168.1 faculty permits. It requires that the representative from the medical school making the application must be a senior administrator, a physician, and familiar with graduate medical education. In addition, the Dean, who makes the application and designates a representative, must submit a Curriculum Vita of the designated representative with the application (1315.03)

Factual Basis/Rationale

AB 2260 (Negrete McLeod, Chapter 565, Statutes of 2006), amended sections 2111, 2113 and 2168 – 2168.5 of the Business & Professions Code, making changes to the license exemption for foreign fellowships and certain specific medical school faculty positions.

The rationale of the proposed regulation is to enhance public protection. Currently, the law allows licensing exemptions for certain physicians practicing in academic settings:

- B&P Code Section 2111 allows for participation in medical training and research fellowships.
- B&P Code Section 2113 allows for appointment to medical school faculty, without any permit or license.
- B&P Code Sections 2168 – 2168.5 allows eminent physicians to practice under a permit.

In order to participate in one of the above license exempt positions, the physicians may not immediately qualify for licensing in California. If physicians qualify for licensure, they must proceed in the regular licensing application process.

All of these unlicensed physicians are allowed to have clinical contact with patients, including all modalities, such as surgery. Current law already requires medical schools and their hospitals and clinics to disclose to patients that physicians-in-training, or residents or fellows, are part of their treatment team. Requiring the same for foreign, unlicensed physicians is consistent with current law for U.S. trained physicians.

Currently, applications for permits under Business & Professions Code Section 2168 are reviewed by members of the Division of Licensing and their staff. B&P Code Sections 2168 – 2168.5 of the Business & Professions Code was amended by AB 2260 (Negrete McLeod, Chapter 565, Statutes of 2006), to require the Division to establish a review committee of two Division members, and one representative from each medical school in California. This proposed regulation sets standards for participation as physician members from the medical schools who are full-time faculty.

The purpose of the proposed Committee requirements is to have the assistance of academic physicians qualified to make a determination on the medical credentials in the applications, as the law requires that these physicians be “academically eminent.” It will

also insure consistency in the qualifications of the approved permits and equitable decision-making for all medical schools.

These proposed regulations were developed in consultation with all eight of California's accredited medical schools.

This proposed regulation is based on the requirement of law, simply bringing consistency in the practice of non-licensed foreign personnel with licensed and non-licensed U.S. personnel, establishing criteria for participation in the application review process, and clarification of terms.

Underlying Data

These proposed regulations were developed in consultation with all eight of California's accredited medical schools.

The Board's Division of Licensing Special Programs Committee created a task force that has been meeting since 2005; first to discuss legislative changes to the B&P Code, and after passage of AB 2260 (Negrete McLeod, Chapter 656, Statutes of 2006), to discuss the promulgation of regulations to comply with the resulting changes in the law. Representatives from all California medical schools have been in attendance at the meetings and have been supportive of all of the concepts contained in this regulation proposal. On November 1, 2006, the task force met publicly to work on a specific proposal that would have a public hearing in February. All affected parties were in agreement with the changes proposed. The minutes of that meeting are being prepared, and will be included in the Final Rulemaking File.

Business Impact

This regulation will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.